



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2397

Introduced 2/19/2009, by Rep. Angelo Saviano

SYNOPSIS AS INTRODUCED:

See Index

Amends the Auction License Act. Provides that upon the effective date of this amendatory Act of the 96th General Assembly, any person who holds a valid license as an associate auctioneer shall be issued an auctioneer license without having to apply to the Department or pay any fee. Provides that upon receipt of such an auctioneer license, a licensee's associate auctioneer license shall no longer be valid. Eliminates the Auction Regulation Administration Fund, the Auction Education Fund, and the Auction Recovery Fund. Provides that all fees collected under this Act shall be deposited into the General Professions Dedicated Fund and appropriated to the Department for the ordinary and contingent expenses of the Department in the administration of this Act. Provides that the Department may investigate the actions of any applicant or person rendering or offering to render auction services, or holding or claiming to hold a license as a licensed auctioneer. In a provision concerning disciplinary hearings, provides that if the Secretary disagrees with the recommendations of the Board, the Secretary may issue an order in contravention of the Board recommendations. Provides that the Department may contract with third parties for services necessary for the proper administration of the Act. Makes certain changes to the responsibilities and powers of the Auction Advisory Board and the Secretary. Defines "address of record". Makes other changes. Effective immediately.

LRB096 08468 ASK 18587 b

1 AN ACT concerning professional regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Auction License Act is amended by changing
5 Sections 5-10, 10-30, 10-35, 10-40, 10-45, 10-50, 15-5, 15-10,
6 15-25, 20-5, 20-15, 20-40, 20-50, 20-55, 20-80, and 30-30 and
7 by adding Sections 10-15a, 20-43, 30-7 and 30-13 as follows:

8 (225 ILCS 407/5-10)

9 (Section scheduled to be repealed on January 1, 2010)

10 Sec. 5-10. Definitions. As used in this Act:

11 "Advertisement" means any written, oral, or electronic
12 communication that contains a promotion, inducement, or offer
13 to conduct an auction or offer to provide an auction service,
14 including but not limited to brochures, pamphlets, radio and
15 television scripts, telephone and direct mail solicitations,
16 electronic media, and other means of promotion.

17 "Advisory Board" means the Auctioneer Advisory Board.

18 "Associate auctioneer" means a person who conducts an
19 auction, but who is under the direct supervision of, and is
20 sponsored by, a licensed auctioneer or auction firm.

21 "Auction" means the sale or lease of property, real or
22 personal, by means of exchanges between an auctioneer ~~or~~
23 ~~associate auctioneer~~ and prospective purchasers or lessees,

1 which consists of a series of invitations for offers made by
2 the auctioneer ~~or associate auctioneer~~ and offers by
3 prospective purchasers or lessees for the purpose of obtaining
4 an acceptable offer for the sale or lease of the property,
5 including the sale or lease of property via mail,
6 telecommunications, or the Internet.

7 "Auction contract" means a written agreement between an
8 auctioneer, ~~associate auctioneer,~~ or auction firm and a seller
9 or sellers.

10 "Auction firm" means any corporation, partnership, or
11 limited liability company that acts as an auctioneer and
12 provides an auction service.

13 "Auction school" means any educational institution, public
14 or private, which offers a curriculum of auctioneer education
15 and training approved by the Department.

16 "Auction service" means the service of arranging,
17 managing, advertising, or conducting auctions.

18 "Auctioneer" means a person or entity who, for another, for
19 a fee, compensation, commission, or any other valuable
20 consideration at auction or with the intention or expectation
21 of receiving valuable consideration by the means of or process
22 of an auction or sale at auction or providing an auction
23 service, offers, negotiates, or attempts to negotiate an
24 auction contract, sale, purchase, or exchange of goods,
25 chattels, merchandise, personal property, real property, or
26 any commodity that may be lawfully kept or offered for sale by

1 or at auction.

2 "Address of Record" means the designated address recorded
3 by the Department in the applicant's or licensee's application
4 file or license file maintained by the Department. It is the
5 duty of the applicant or licensee to inform the Department of
6 any change of address, and such changes must be made either
7 through the Department's website or by directly contacting the
8 Department.

9 "Department" means the Department of Financial and
10 Professional Regulation.

11 "Goods" means chattels, movable goods, merchandise, or
12 personal property or commodities of any form or type that may
13 be lawfully kept or offered for sale.

14 "Licensee" means any person licensed under this Act.

15 "Managing auctioneer" means any person licensed as an
16 auctioneer who manages and supervises licensees sponsored by an
17 auction firm or auctioneer.

18 "Person" means an individual, association, partnership,
19 corporation, or limited liability company or the officers,
20 directors, or employees of the same.

21 "Pre-renewal period" means the 24 months prior to the
22 expiration date of a license issued under this Act.

23 "Secretary" means the Secretary of the Department of
24 Financial and Professional Regulation or his or her designee.

25 "Sponsoring auctioneer" means the auctioneer or auction
26 firm who has issued a sponsor card to a licensed ~~associate~~

1 ~~auctioneer or~~ auctioneer.

2 "Sponsor card" means the temporary permit issued by the
3 sponsoring auctioneer certifying that the licensee named
4 thereon is employed by or associated with the sponsoring
5 auctioneer and the sponsoring auctioneer shall be responsible
6 for the actions of the sponsored licensee.

7 (Source: P.A. 95-572, eff. 6-1-08.)

8 (225 ILCS 407/10-15a new)

9 Sec. 10-15a. Associate auctioneer license; discontinuance.

10 (a) Upon the effective date of this amendatory Act of the
11 96th General Assembly, the Department shall no longer issue or
12 renew any associate auctioneer license.

13 (b) Any person who holds a valid license as an associate
14 auctioneer on the effective date of this amendatory Act of the
15 96th General Assembly shall be issued an auctioneer license
16 without having to apply to the Department or pay any fee. Such
17 licensee's previous record as an associate auctioneer,
18 including any past discipline imposed on him or her, shall be
19 become part of his or her auctioneer license record. The
20 expiration date of such licensee's auctioneer license shall be
21 the same as the expiration date of his or her associate
22 auctioneer license.

23 (c) Upon receipt of an auctioneer license issued by the
24 Department pursuant to this Section, a licensee's associate
25 auctioneer license shall no longer be valid.

1 (225 ILCS 407/10-30)

2 (Section scheduled to be repealed on January 1, 2010)

3 Sec. 10-30. Expiration, renewal, and continuing education.

4 (a) License expiration dates, renewal periods, renewal
5 fees, and procedures for renewal of licenses issued under this
6 Act shall be set by rule of the Department. An entity may renew
7 its license by paying the required fee and by meeting the
8 renewal requirements adopted by the Department under this
9 Section.

10 (b) All renewal applicants must provide proof as determined
11 by the Department of having met the continuing education
12 requirements set forth by the Department by rule. At a minimum,
13 the rules shall require an applicant for renewal licensure as
14 an auctioneer ~~or associate auctioneer~~ to provide proof of the
15 completion of at least 12 hours of continuing education during
16 the pre-renewal period preceding the expiration date of the
17 license from schools approved by the Department, as established
18 by rule.

19 (c) The Department, in its discretion, may waive
20 enforcement of the continuing education requirements of this
21 Section and shall adopt rules defining the standards and
22 criteria for such waiver.

23 (d) (Blank).

24 (Source: P.A. 95-572, eff. 6-1-08.)

1 (225 ILCS 407/10-35)

2 (Section scheduled to be repealed on January 1, 2010)

3 Sec. 10-35. Completed 45-day permit sponsor card;
4 termination by sponsoring auctioneer; inoperative status.

5 (a) No auctioneer ~~or associate auctioneer~~ shall conduct an
6 auction or provide an auction service without being properly
7 sponsored by a licensed auctioneer or auction firm.

8 (b) The sponsoring auctioneer or sponsoring auction firm
9 shall prepare upon forms provided by the Department and deliver
10 to each auctioneer ~~or associate auctioneer~~ employed by or
11 associated with the sponsoring auctioneer or sponsoring
12 auction firm a properly completed duplicate 45-day permit
13 sponsor card certifying that the person whose name appears
14 thereon is in fact employed by or associated with said
15 sponsoring auctioneer or sponsoring auction firm. The
16 sponsoring auctioneer or sponsoring auction firm shall send the
17 original 45-day permit sponsor card, along with a valid
18 terminated license or other authorization as provided by rule
19 and the appropriate fee, to the Department within 24 hours
20 after the issuance of the sponsor card. It is a violation of
21 this Act for any sponsoring auctioneer or sponsoring auction
22 firm to issue a sponsor card to any auctioneer, ~~associate~~
23 ~~auctioneer,~~ or applicant, unless the auctioneer, ~~associate~~
24 ~~auctioneer,~~ or applicant presents in hand a valid terminated
25 license or other authorization, as provided by rule.

26 (c) An auctioneer may be self-sponsored or may be sponsored

1 by another licensed auctioneer or auction firm.

2 (d) (Blank). ~~An associate auctioneer must be sponsored by a~~
3 ~~licensed auctioneer or auction firm.~~

4 (e) When an auctioneer ~~or associate auctioneer~~ terminates
5 his or her employment or association with a sponsoring
6 auctioneer or sponsoring auction firm or the employment or
7 association is terminated by the sponsoring auctioneer or
8 sponsoring auction firm, the terminated licensee shall obtain
9 from that sponsoring auctioneer or sponsoring auction firm his
10 or her license endorsed by the sponsoring auctioneer or
11 sponsoring auction firm indicating the termination. The
12 terminating sponsoring auctioneer or sponsoring auction firm
13 shall send a copy of the terminated license within 5 days after
14 the termination to the Department or shall notify the
15 Department in writing of the termination and explain why a copy
16 of the terminated license was not surrendered.

17 (f) The license of any auctioneer ~~or associate auctioneer~~
18 whose association with a sponsoring auctioneer or sponsoring
19 auction firm has terminated shall automatically become
20 inoperative immediately upon such termination, unless the
21 terminated licensee accepts employment or becomes associated
22 with a new sponsoring auctioneer or sponsoring auction firm
23 pursuant to subsection (g) of this Section. An inoperative
24 licensee under this Act shall not conduct an auction or provide
25 auction services while the license is in inoperative status.

26 (g) When a terminated or inoperative auctioneer ~~or~~

1 ~~associate auctioneer~~ accepts employment or becomes associated
2 with a new sponsoring auctioneer or sponsoring auction firm,
3 the new sponsoring auctioneer or sponsoring auction firm shall
4 send to the Department a properly completed 45-day permit
5 sponsor card, the terminated license, and the appropriate fee.
6 (Source: P.A. 95-572, eff. 6-1-08.)

7 (225 ILCS 407/10-40)

8 (Section scheduled to be repealed on January 1, 2010)

9 Sec. 10-40. Restoration.

10 (a) A licensee whose license has lapsed or expired shall
11 have 2 years from the expiration date to restore his or her
12 license without examination. The expired licensee shall make
13 application to the Department on forms provided by the
14 Department, including a properly completed 45-day permit
15 sponsor card, provide evidence of successful completion of 12
16 hours of approved continuing education during the period of
17 time the license had lapsed, and pay all ~~lapsed~~ fees and
18 penalties as established by ~~administrative~~ rule.

19 (b) Notwithstanding any other provisions of this Act to the
20 contrary, any licensee whose license under this Act has expired
21 is eligible to restore such license without paying any lapsed
22 fees and penalties provided that the license expired while the
23 licensee was:

24 (1) on active duty with the United States Army, United
25 States Marine Corps, United States Navy, United States Air

1 Force, United States Coast Guard, the State Militia called
2 into service or training;

3 (2) engaged in training or education under the
4 supervision of the United States prior to induction into
5 military service; or

6 (3) serving as an employee of the Department, while the
7 employee was required to surrender his or her license due
8 to a possible conflict of interest.

9 A licensee shall be eligible to restore a license under the
10 provisions of this subsection for a period of 2 years following
11 the termination of the service, education, or training by
12 providing a properly completed application and 45-day permit
13 sponsor card, provided that the termination was by other than
14 dishonorable discharge and provided that the licensee
15 furnishes the Department with an affidavit specifying that the
16 licensee has been so engaged.

17 (c) At any time after the suspension, revocation, placement
18 on probationary status, or other disciplinary action taken
19 under this Act with reference to any license, the Department
20 may restore the license to the licensee without examination
21 upon the order of the Secretary, if the licensee submits a
22 properly completed application and 45-day permit sponsor card,
23 pays appropriate fees, and otherwise complies with the
24 conditions of the order.

25 (Source: P.A. 95-331, eff. 8-21-07; 95-572, eff. 6-1-08.)

1 (225 ILCS 407/10-45)

2 (Section scheduled to be repealed on January 1, 2010)

3 Sec. 10-45. Nonresident auctioneer reciprocity.

4 (a) A person holding a license to engage in auctions issued
5 to him or her by the proper authority of a state, territory, or
6 possession of the United States of America or the District of
7 Columbia that has licensing requirements equal to or
8 substantially equivalent to the requirements of this State and
9 that otherwise meets the requirements of this Act may obtain a
10 license under this Act without examination, provided:

11 (1) that the Department has entered into a valid
12 reciprocal agreement with the proper authority of the
13 state, territory, or possession of the United States of
14 America or the District of Columbia from which the
15 nonresident applicant has a valid license;

16 (2) that the applicant provides the Department with a
17 certificate of good standing from the applicant's ~~resident~~
18 state;

19 (3) that the applicant completes and submits an
20 application as provided by the Department; and

21 (4) that the applicant pays all applicable fees
22 required under this Act.

23 (b) A nonresident applicant shall file an irrevocable
24 consent with the Department that actions may be commenced
25 against the applicant or nonresident licensee in a court of
26 competent jurisdiction in this State by the service of summons,

1 process, or other pleading authorized by the law upon the
2 Secretary. The consent shall stipulate and agree that service
3 of the process, summons, or pleading upon the Secretary shall
4 be taken and held in all courts to be valid and binding as if
5 actual service had been made upon the applicant in Illinois. If
6 a summons, process, or other pleading is served upon the
7 Secretary, it shall be by duplicate copies, one of which shall
8 be retained by the Department and the other immediately
9 forwarded by certified or registered mail to the last known
10 business address of the applicant or nonresident licensee
11 against whom the summons, process, or other pleading may be
12 directed.

13 (Source: P.A. 95-572, eff. 6-1-08.)

14 (225 ILCS 407/10-50)

15 (Section scheduled to be repealed on January 1, 2010)

16 Sec. 10-50. Fees; disposition of funds. ~~Fees shall be~~
17 ~~determined by rule and shall be non-refundable.~~

18 (a) The Department shall establish by rule a schedule of
19 fees for the administration and maintenance of this Act. Such
20 fees shall be nonrefundable.

21 (b) All fees collected under this Act shall be deposited
22 into the General Professions Dedicated Fund and appropriated to
23 the Department for the ordinary and contingent expenses of the
24 Department in the administration of this Act. ~~The Department~~
25 ~~shall provide by administrative rule for fees to be collected~~

1 ~~from licensees and applicants to cover the statutory~~
2 ~~requirements for funding the Auctioneer Recovery Fund. The~~
3 ~~Department may also provide by administrative rule for general~~
4 ~~fees to cover the reasonable expenses of carrying out other~~
5 ~~functions and responsibilities under this Act.~~

6 (Source: P.A. 95-572, eff. 6-1-08.)

7 (225 ILCS 407/15-5)

8 (Section scheduled to be repealed on January 1, 2010)

9 Sec. 15-5. Representations. An auctioneer, ~~associate~~
10 ~~auctioneer,~~ or auction firm, or the sponsored licensees,
11 agents, or employees of an auctioneer or auction firm,
12 conducting an auction or providing an auction service shall
13 not:

14 (1) misrepresent a fact material to a purchaser's
15 decision to buy at or by auction;

16 (2) predict specific or immediate increases in the
17 value of any item offered for sale at auction; or

18 (3) materially misrepresent the qualities or
19 characteristics of any item offered for sale at auction.

20 (Source: P.A. 91-603, eff. 1-1-00.)

21 (225 ILCS 407/15-10)

22 (Section scheduled to be repealed on January 1, 2010)

23 Sec. 15-10. Auction contract. Any auctioneer, ~~associate~~
24 ~~auctioneer,~~ or auction firm shall not conduct an auction or

1 provide an auction service, unless the auctioneer,~~associate~~
2 ~~auctioneer,~~ or auction firm enters into a written ~~or oral~~
3 auction contract with the seller of any property at auction
4 prior to the date of the auction. The agreement shall be signed
5 by the auctioneer,~~associate auctioneer,~~ or auction firm
6 conducting an auction or providing an auction service and the
7 seller or sellers, or the legal agent of the seller or sellers
8 of the property to be offered at or by auction, and shall
9 include, but not be limited to the following disclosures:

10 (1) Licensees shall disclose:

11 (A) the name, license number, business address,
12 and phone number of the auctioneer,~~associate~~
13 ~~auctioneer,~~ or auction firm conducting an auction or
14 providing an auction service;

15 (B) the fee to be paid to the auctioneer,~~associate~~
16 ~~auctioneer,~~ or auction firm for conducting an auction
17 or providing an auction service; and

18 (C) an estimate of the advertising costs that shall
19 be paid by the seller or sellers of property at auction
20 and a disclosure that, if the actual advertising costs
21 exceeds 120% of the estimated advertising cost, the
22 auctioneer,~~associate auctioneer,~~ or auction firm
23 shall pay the advertising costs that exceed 120% of the
24 estimated advertising costs or shall have the seller or
25 sellers agree in writing to pay for the actual
26 advertising costs in excess of 120% of the estimated

1 advertising costs.

2 (2) Sellers shall disclose:

3 (A) the name, address, and phone number of the
4 seller or sellers or the legal agent of the seller or
5 sellers of property to be sold at auction; and

6 (B) any mortgage, lien, or encumbrance of which the
7 seller has knowledge on any property or goods to be
8 sold or leased at or by auction.

9 (Source: P.A. 91-603, eff. 1-1-00.)

10 (225 ILCS 407/15-25)

11 (Section scheduled to be repealed on January 1, 2010)

12 Sec. 15-25. Auction firm. No corporation, limited
13 liability company, or partnership shall be licensed without
14 being managed by a licensed auctioneer. The managing auctioneer
15 of any auction firm shall be responsible for the actions of all
16 licensed and unlicensed employees, agents, and representatives
17 of said auction firm while the firm is conducting an auction or
18 providing an auction service.

19 Whenever, in the opinion of the Department, a person
20 violates any provision of this Act, the Department may issue a
21 rule to show cause why an order to cease and desist should not
22 be entered against that person. The rule shall clearly set
23 forth the grounds relied upon by the Department and shall allow
24 the person at least 7 days from the date of the rule to file an
25 answer satisfactory to the Department. Failure to answer to the

1 satisfaction of the Department shall cause an order to cease
2 and desist to be issued.

3 (Source: P.A. 91-603, eff. 1-1-00.)

4 (225 ILCS 407/20-5)

5 (Section scheduled to be repealed on January 1, 2010)

6 Sec. 20-5. Unlicensed practice; civil penalty.

7 (a) Any person who practices, offers to practice, attempts
8 to practice, or holds oneself out to practice as an auctioneer,
9 ~~an associate auctioneer,~~ an auction firm, or any other licensee
10 under this Act without being licensed under this Act shall, in
11 addition to any other penalty provided by law, pay a civil
12 penalty to the Department in an amount not to exceed \$10,000
13 for each offense as determined by the Department. The civil
14 penalty fine shall be assessed by the Department after a
15 hearing is held in accordance with the provisions set forth in
16 this Act regarding a hearing for the discipline of a license.

17 (b) The Department has the authority and power to
18 investigate any and all unlicensed activity pursuant to this
19 Act.

20 (c) The civil penalty shall be paid within 60 days after
21 the effective date of the order imposing the civil penalty. The
22 order shall constitute a judgment and may be filed and
23 execution had thereon in the same manner from any court of
24 record.

25 (d) Conducting an auction or providing an auction service

1 in Illinois without holding a valid and current license under
2 this Act is declared to be adverse to the public welfare, to
3 constitute a public nuisance, and to cause irreparable harm to
4 the public welfare. The Secretary, the Attorney General, the
5 State's Attorney of any county in the State, or any other
6 person may maintain an action in the name of the People of the
7 State of Illinois and may apply for injunctive relief in any
8 circuit court to enjoin the person or entity from engaging in
9 such practice.

10 Upon the filing of a verified petition in a circuit court,
11 the court, if satisfied by affidavit or otherwise that the
12 person or entity has been engaged in the practice of auctioning
13 without a valid and current license, may enter a temporary
14 restraining order without notice or bond enjoining the
15 defendant from further practice. Only the showing of
16 non-licensure, by affidavit or otherwise, is necessary in order
17 for a temporary injunction to be issued. A copy of the verified
18 complaint shall be served upon the defendant and the
19 proceedings shall thereafter be conducted as in other civil
20 cases except as modified by this Section. If it is established
21 that the defendant has been or is engaged in unlawful practice,
22 the court may enter an order or judgment perpetually enjoining
23 the defendant from further practice. In all proceedings
24 hereunder, the court, in its discretion, may apportion the
25 costs among the parties interested in the action, including
26 cost of filing the complaint, service of process, witness fees

1 and expenses, court reporter charges, and reasonable
2 attorneys' fees. In case of violation of any injunctive order
3 entered under the provisions of this Section, the court may
4 summarily try and punish the offender for contempt of court.
5 These injunction proceedings shall be in addition to, and not
6 in lieu of, all penalties and other remedies provided in this
7 Act.

8 (Source: P.A. 95-572, eff. 6-1-08.)

9 (225 ILCS 407/20-15)

10 (Section scheduled to be repealed on January 1, 2010)

11 Sec. 20-15. Disciplinary actions; grounds. The Department
12 may refuse to issue or renew a license, may place on probation
13 or administrative supervision, suspend, or revoke any license
14 or may reprimand or take other disciplinary or non-disciplinary
15 action as the Department may deem proper, including the
16 imposition of fines not to exceed \$10,000 for each violation
17 upon anyone licensed under this Act for any of the following
18 reasons:

19 (1) False or fraudulent representation or material
20 misstatement in furnishing information to the Department
21 in obtaining or seeking to obtain a license.

22 (2) Violation of any provision of this Act or the rules
23 promulgated pursuant to this Act.

24 (3) Conviction of or entry of a plea of guilty or nolo
25 contendere to any crime that is a felony under the laws of

1 the United States or any state or territory thereof, or
2 that is a misdemeanor, an essential element of which is
3 dishonesty, or any crime that is directly related to the
4 practice of the profession. ~~fraud, or larceny,~~
5 ~~embezzlement, or obtaining money, property, or credit by~~
6 ~~false pretenses or by means of a confidence game,~~
7 ~~conviction in this or another state of a crime that is a~~
8 ~~felony under the laws of this State, or conviction of a~~
9 ~~felony in a federal court.~~

10 (4) Being adjudged to be a person under legal
11 disability or subject to involuntary admission or to meet
12 the standard for judicial admission as provided in the
13 Mental Health and Developmental Disabilities Code.

14 (5) Discipline of a licensee by another state, the
15 District of Columbia, a territory of the United States, a
16 foreign nation, a governmental agency, or any other entity
17 authorized to impose discipline if at least one of the
18 grounds for that discipline is the same as or the
19 equivalent to one of the grounds for discipline set forth
20 in this Act or for failing to report to the Department,
21 within 30 days, any adverse final action taken against the
22 licensee by any other licensing jurisdiction, government
23 agency, law enforcement agency, or court, or liability for
24 conduct that would constitute grounds for action as set
25 forth in this Act.

26 (6) Engaging in the practice of auctioneering,

1 conducting an auction, or providing an auction service
2 without a license or after the license was expired,
3 revoked, suspended, or terminated or while the license was
4 inoperative.

5 (7) Attempting to subvert or cheat on the auctioneer
6 exam or any continuing education exam, or aiding or
7 abetting another to do the same.

8 (8) Directly or indirectly giving to or receiving from
9 a person, firm, corporation, partnership, or association a
10 fee, commission, rebate, or other form of compensation for
11 professional service not actually or personally rendered.

12 (9) Making any substantial misrepresentation or
13 untruthful advertising.

14 (10) Making any false promises of a character likely to
15 influence, persuade, or induce.

16 (11) Pursuing a continued and flagrant course of
17 misrepresentation or the making of false promises through a
18 licensee, agent, employee, advertising, or otherwise.

19 (12) Any misleading or untruthful advertising, or
20 using any trade name or insignia of membership in any
21 auctioneer association or organization of which the
22 licensee is not a member.

23 (13) Commingling funds of others with his or her own
24 funds or failing to keep the funds of others in an escrow
25 or trustee account.

26 (14) Failure to account for, remit, or return any

1 moneys, property, or documents coming into his or her
2 possession that belong to others, acquired through the
3 practice of auctioneering, conducting an auction, or
4 providing an auction service within 30 days of the written
5 request from the owner of said moneys, property, or
6 documents.

7 (15) Failure to maintain and deposit into a special
8 account, separate and apart from any personal or other
9 business accounts, all moneys belonging to others
10 entrusted to a licensee while acting as an auctioneer,
11 associate auctioneer, auction firm, or as a temporary
12 custodian of the funds of others.

13 (16) Failure to make available to Department personnel
14 during normal business hours all escrow and trustee records
15 and related documents maintained in connection with the
16 practice of auctioneering, conducting an auction, or
17 providing an auction service within 24 hours after a
18 request from Department personnel.

19 (17) Making or filing false records or reports in his
20 or her practice, including but not limited to false records
21 or reports filed with State agencies.

22 (18) Failing to voluntarily furnish copies of all
23 written instruments prepared by the auctioneer and signed
24 by all parties to all parties at the time of execution.

25 (19) Failing to provide information within 30 days in
26 response to a written request made by the Department.

1 (20) Engaging in any act that constitutes a violation
2 of Section 2-102, 3-103, or 3-105 of the Illinois Human
3 Rights Act.

4 (21) Causing a payment from the Auction Recovery Fund.

5 (22) Engaging in dishonorable, unethical, or
6 unprofessional conduct of a character likely to deceive,
7 defraud, or harm the public.

8 (23) Offering or advertising real estate for sale or
9 lease at auction without a valid broker or salesperson's
10 license under the Real Estate License Act of 1983, or any
11 successor Act, unless exempt from licensure under the terms
12 of the Real Estate License Act of 2001, or any successor
13 Act.

14 (24) Inability to practice the profession with
15 reasonable judgement, skill, or safety as a result of a
16 physical illness, including, but not limited to,
17 deterioration through the aging process or loss of motor
18 skill, or a mental illness or disability. ~~Physical illness,~~
19 ~~mental illness, or other impairment including without~~
20 ~~limitation deterioration through the aging process, mental~~
21 ~~illness, or disability that results in the inability to~~
22 ~~practice the profession with reasonable judgment, skill,~~
23 ~~and safety.~~

24 (25) A pattern of practice or other behavior that
25 demonstrates incapacity or incompetence to practice under
26 this Act.

1 (26) Being named as a perpetrator in an indicated
2 report by the Department of Children and Family Services
3 under the Abused and Neglected Child Reporting Act and upon
4 proof by clear and convincing evidence that the licensee
5 has caused a child to be an abused child or a neglected
6 child as defined in the Abused and Neglected Child
7 Reporting Act.

8 (27) Inability to practice with reasonable judgement,
9 skill, or safety as a result of habitual or excessive use
10 or addiction to alcohol, narcotics, stimulants, or any
11 other chemical agent or drug. ~~Habitual or excessive use or~~
12 ~~addiction to alcohol, narcotics, stimulants, or any other~~
13 ~~chemical agent or drug that results in a licensee's~~
14 ~~inability to practice with reasonable judgment, skill, or~~
15 ~~safety.~~

16 (28) Wilfully failing to report an instance of
17 suspected child abuse or neglect as required by the Abused
18 and Neglected Child Reporting Act.

19 The entry of an order by a circuit court establishing that
20 any person holding a license under this Act is subject to
21 involuntary admission or judicial admission, as provided for in
22 the Mental Health and Developmental Disabilities Code,
23 operates as an automatic suspension of that license. That
24 person may have his or her license restored only upon the
25 determination by a circuit court that the patient is no longer
26 subject to involuntary admission or judicial admission and the

1 issuance of an order so finding and discharging the patient and
2 upon the Board's recommendation to the Department that the
3 license be restored. Where circumstances so indicate, the Board
4 may recommend to the Department that it require an examination
5 prior to restoring a suspended license.

6 If the Department or Board finds an individual unable to
7 practice because of the reasons set forth in this Section, the
8 Department or Board may require that individual to submit to
9 care, counseling, or treatment by physicians approved or
10 designated by the Department or Board, as a condition, term, or
11 restriction for continued, reinstated, or renewed licensure to
12 practice; or, in lieu of care, counseling, or treatment, the
13 Department may file, or the Board may recommend to the
14 Department to file, a complaint to immediately suspend, revoke,
15 or otherwise discipline the license of the individual. An
16 individual whose license was granted, continued, reinstated,
17 renewed, disciplined or supervised subject to such terms,
18 conditions, or restrictions, and who fails to comply with such
19 terms, conditions, or restrictions, shall be referred to the
20 Secretary for a determination as to whether the individual
21 shall have his or her license suspended immediately, pending a
22 hearing by the Department. In instances in which the Secretary
23 immediately suspends a person's license under this Section, a
24 hearing on that person's license must be convened by the
25 Department within 21 days after the suspension and completed
26 without appreciable delay. The Department and Board shall have

1 the authority to review the subject individual's record of
2 treatment and counseling regarding the impairment to the extent
3 permitted by applicable federal statutes and regulations
4 safeguarding the confidentiality of medical records.

5 An individual licensed under this Act and affected under
6 this Section shall be afforded an opportunity to demonstrate to
7 the Department or Board that he or she can resume practice in
8 compliance with acceptable and prevailing standards under the
9 provisions of his or her license.

10 In enforcing this Section, the Department or Board, upon a
11 showing of a possible violation, may compel an individual
12 licensed to practice under this Act, or who has applied for
13 licensure under this Act, to submit to a mental or physical
14 examination, or both, as required by and at the expense of the
15 Department. The Department or Board may order the examining
16 physician to present testimony concerning the mental or
17 physical examination of the licensee or applicant. No
18 information shall be excluded by reason of any common law or
19 statutory privilege relating to communications between the
20 licensee or applicant and the examining physician. The
21 examining physicians shall be specifically designated by the
22 Board or Department. The individual to be examined may have, at
23 his or her own expense, another physician of his or her choice
24 present during all aspects of this examination. Failure of an
25 individual to submit to a mental or physical examination when
26 directed shall be grounds for suspension of his or her license

1 until the individual submits to the examination, if the
2 Department finds that, after notice and hearing, the refusal to
3 submit to the examination was without reasonable cause.

4 (Source: P.A. 95-572, eff. 6-1-08.)

5 (225 ILCS 407/20-40)

6 (Section scheduled to be repealed on January 1, 2010)

7 Sec. 20-40. Hearings; record of hearings.

8 (a) The Department shall have the authority to conduct
9 hearings ~~before the Advisory Board~~ on proceedings to revoke,
10 suspend, place on probation or administrative review,
11 reprimand, or refuse to issue or renew any license under this
12 Act or to impose a civil penalty not to exceed \$10,000 upon any
13 licensee under this Act.

14 (b) The Department, at its expense, shall preserve a record
15 of all proceedings at the formal hearing of any case. The
16 notice of hearing, complaint, all other documents in the nature
17 of pleadings, written motions filed in the proceedings, the
18 transcripts of testimony, the report of the Board, and orders
19 of the Department shall be in the record of the proceeding. The
20 Department shall furnish a transcript of such record to any
21 person interested in such hearing upon payment of the fee
22 required under Section 2105-115 of the Department of
23 Professional Regulation Law (20 ILCS 2105/2105-115). ~~The~~
24 ~~Department, at its expense, shall preserve a record of all~~
25 ~~proceedings at the formal hearing of any case involving the~~

1 ~~discipline of any license under this Act. The notice of~~
2 ~~hearing, complaint and all other documents in the nature of~~
3 ~~pleadings and written motions filed in the proceedings, the~~
4 ~~transcript of testimony, the report of the Board, and the order~~
5 ~~of the Department shall be the record of proceeding. At all~~
6 ~~hearings or prehearing conference, the Department and the~~
7 ~~respondent shall be entitled to have a court reporter in~~
8 ~~attendance for purposes of transcribing the proceeding or~~
9 ~~prehearing conference.~~

10 (Source: P.A. 95-572, eff. 6-1-08.)

11 (225 ILCS 407/20-43 new)

12 Sec. 20-43. Investigations; notice and hearing. The
13 Department may investigate the actions of any applicant or
14 person rendering or offering to render auction services, or
15 holding or claiming to hold a license as a licensed auctioneer.
16 At least 30 days before any disciplinary hearing under this
17 Act, the Department shall: (i) notify the accused in writing of
18 the charges made and the time and place of the hearing; (ii)
19 direct the accused to file with the Board a written answer
20 under oath to the charges within 20 days of receiving service
21 of the notice; and (iii) inform the accused that if he or she
22 fails to file an answer to the charges within 20 days of
23 receiving service of the notice, a default judgement may be
24 entered against him or her, or his or her license may be
25 suspended, revoked, placed on probationary status, or other

1 disciplinary action taken with regard to the license as the
2 Department may consider proper, including, but not limited to,
3 limiting the scope, nature, or extent of the licensee's
4 practice, or imposing a fine.

5 At the time and place of the hearing fixed in the notice,
6 the Board shall proceed to hear the charges and the accused or
7 his or her counsel shall be accorded ample opportunity to
8 present any pertinent statements, testimony, evidence, and
9 arguments in his or her defense. The Board may continue the
10 hearing when it deems it appropriate.

11 Written notice of the hearing may be served by personal
12 delivery or by certified mail to the last known address of
13 record, unless specified as otherwise by the accused in his or
14 her last communication with the Department.

15 (225 ILCS 407/20-50)

16 (Section scheduled to be repealed on January 1, 2010)

17 Sec. 20-50. Findings and recommendations. ~~Board's findings~~
18 ~~of fact, conclusions of law, and recommendation to the~~
19 ~~Secretary.~~ At the conclusion of the hearing, the Board shall
20 present to the Secretary a written report of its findings of
21 fact, conclusions of law, and recommendations. The report shall
22 contain a finding whether or not the accused person violated
23 this Act or any rules promulgated pursuant to this Act. The
24 Board shall specify the nature of any violations and shall make
25 its recommendations to the Secretary. In making

1 recommendations for any disciplinary action, the Board may take
2 into consideration all facts and circumstances bearing upon the
3 reasonableness of the conduct of the accused, including, but
4 not limited to, previous discipline of the accused by the
5 Department, intent, degree of harm to the public and likelihood
6 of future harm to the public, any restitution made by the
7 accused, and whether the incident or incidents contained in the
8 complaint appear to be isolated or represent a continuing
9 pattern of conduct. In making its recommendations for
10 discipline, the Board shall endeavor to ensure that the
11 severity of the discipline recommended is reasonably
12 proportional to the severity of the violation.

13 The report of the Board's findings of fact, conclusions of
14 law, and recommendations shall be the basis for the
15 Department's decision to refuse to issue, restore, or renew a
16 license, or to take any other disciplinary action. If the
17 Secretary disagrees with the recommendations of the Board, the
18 Secretary may issue an order in contravention of the Board
19 recommendations. The report's findings are not admissible in
20 evidence against the person in a criminal prosecution brought
21 for a violation of this Act, but the hearing and findings are
22 not a bar to a criminal prosecution for the violation of this
23 Act. ~~At the conclusion of the hearing, the Advisory Board shall~~
24 ~~present to the Secretary a written report of its findings of~~
25 ~~facts, conclusions of law, and recommendations regarding~~
26 ~~discipline or a fine. The report shall contain a finding~~

1 ~~whether or not the accused person violated this Act or failed~~
2 ~~to comply with the conditions required in this Act. The~~
3 ~~Advisory Board shall specify the nature of the violation or~~
4 ~~failure to comply and shall make its recommendations to the~~
5 ~~Secretary.~~

6 If the Secretary disagrees in any regard with the report of
7 the Advisory Board, the Secretary may issue an order in
8 contravention of the report. The Secretary shall provide a
9 written report to the Advisory Board on any deviation and shall
10 specify with particularity the reasons for that action in the
11 final order.

12 (Source: P.A. 95-572, eff. 6-1-08.)

13 (225 ILCS 407/20-55)

14 (Section scheduled to be repealed on January 1, 2010)

15 Sec. 20-55. Appointment of a hearing officer. ~~Motion for~~
16 ~~rehearing; rehearing.~~ The Secretary has the authority to
17 appoint any attorney licensed to practice law in the State of
18 Illinois to serve as the hearing officer in any action for
19 refusal to issue, restore, or renew a license or to discipline
20 a licensee. The hearing officer has full authority to conduct
21 the hearing. Any Board member may attend hearings. The hearing
22 officer shall report his or her findings of fact, conclusions
23 of law, and recommendations to the Board. The Board shall
24 review the report of the hearing officer and present its
25 findings of fact, conclusions of law, and recommendations to

1 the Secretary and to all parties to the proceedings.

2 If the Secretary disagrees with the recommendations of the
3 Board or hearing officer, the Secretary may issue an order in
4 contravention of the Board's recommendations. ~~In any hearing~~
5 ~~involving the discipline of a license, a copy of the Advisory~~
6 ~~Board's report shall be served upon the respondent by the~~
7 ~~Department, either personally or as provided in this Act for~~
8 ~~the service of the notice of hearing. Within 20 calendar days~~
9 ~~after the service, the respondent may present to the Department~~
10 ~~a motion in writing for a rehearing, which shall specify the~~
11 ~~particular grounds for rehearing.~~

12 ~~If no motion for rehearing is filed, then upon the~~
13 ~~expiration of the time specified for filing a motion, or if a~~
14 ~~motion for rehearing is denied, then upon denial, the Secretary~~
15 ~~may enter an order in accordance with the recommendations of~~
16 ~~the Advisory Board, except as provided for in this Act. If the~~
17 ~~respondent orders a transcript of the record from the reporting~~
18 ~~service and pays for it within the time for filing a motion for~~
19 ~~rehearing, the 20 calendar day period within which a motion for~~
20 ~~rehearing may be filed shall commence upon the delivery of the~~
21 ~~transcript to the respondent.~~

22 ~~Whenever the Secretary is not satisfied that substantial~~
23 ~~justice has been done in the hearing or in the Advisory Board's~~
24 ~~report, the Secretary may order a rehearing by the same.~~

25 (Source: P.A. 95-572, eff. 6-1-08.)

1 (225 ILCS 407/20-80)

2 (Section scheduled to be repealed on January 1, 2010)

3 Sec. 20-80. Summary suspension. The Secretary may
4 temporarily suspend any license pursuant to this Act, without
5 hearing, simultaneously with the institution of proceedings
6 for a hearing provided for in this Act, if the Secretary finds
7 that the evidence indicates that the public interest, safety,
8 or welfare requires emergency action. In the event that the
9 Secretary temporarily suspends any license without a hearing, a
10 hearing shall be commenced ~~held~~ within 30 calendar days after
11 the suspension has begun. The suspended licensee may seek a
12 continuance of the hearing during which the suspension shall
13 remain in effect. The proceeding shall be concluded without
14 appreciable delay.

15 (Source: P.A. 95-572, eff. 6-1-08.)

16 (225 ILCS 407/30-7 new)

17 Sec. 30-7. Department; powers and duties. The Department
18 shall exercise the powers and duties prescribed by the Civil
19 Administrative Code of Illinois for the administration of
20 licensing acts and shall exercise such other powers and duties
21 as are prescribed by this Act. The Department may contract with
22 third parties for services necessary for the proper
23 administration of this Act.

24 (225 ILCS 407/30-13 new)

1 Sec. 30-13. The General Professions Dedicated Fund. All of
2 the fees, fines, and penalties collected under this Act shall
3 be deposited into the General Professions Dedicated Fund. The
4 monies deposited into the General Professions Dedicated Fund
5 shall be used by the Department, as appropriated, for the
6 ordinary and contingent expenses of the Department. Monies in
7 the General Professions Dedicated Fund may be invested and
8 reinvested, with all earnings received from investments to be
9 deposited into that Fund and used for the same purposes as fees
10 deposited in that Fund.

11 (225 ILCS 407/30-30)

12 (Section scheduled to be repealed on January 1, 2010)

13 Sec. 30-30. Auction Advisory Board.

14 (a) There is hereby created the Auction Advisory Board. The
15 Advisory Board shall consist of 7 members and shall be
16 appointed by the Secretary. In making the appointments, the
17 Secretary shall give due consideration to the recommendations
18 by members and organizations of the industry, including but not
19 limited to the Illinois State Auctioneers Association. Five
20 members of the Advisory Board shall be licensed auctioneers,
21 except that for the initial appointments, these members may be
22 persons without a license, but who have been auctioneers for at
23 least 5 years preceding their appointment to the Advisory
24 Board. One member shall be a public member who represents the
25 interests of consumers and who is not licensed under this Act

1 or the spouse of a person licensed under this Act or who has
2 any responsibility for management or formation of policy of or
3 any financial interest in the auctioneering profession or any
4 other connection with the profession. One member shall be
5 actively engaged in the real estate industry and licensed as a
6 broker or salesperson. The Advisory Board shall annually elect
7 one of its members to serve as Chairperson.

8 (b) Members shall be appointed for a term of 4 years,
9 except that of the initial appointments, 3 members shall be
10 appointed to serve a term of 3 years and 4 members shall be
11 appointed to serve a term of 4 years. The Secretary shall fill
12 a vacancy for the remainder of any unexpired term. Each member
13 shall serve on the Advisory Board until his or her successor is
14 appointed and qualified. No person shall be appointed to serve
15 more than 2 terms, including the unexpired portion of a term
16 due to vacancy. To the extent practicable, the Secretary shall
17 appoint members to insure that the various geographic regions
18 of the State are properly represented on the Advisory Board.

19 (c) A majority of the Advisory Board members currently
20 appointed shall constitute a quorum. A vacancy in the
21 membership of the Advisory Board shall not impair the right of
22 a quorum to exercise all of the rights and perform all the
23 duties of the Board.

24 (d) Each member of the Advisory Board shall receive a per
25 diem stipend in an amount to be determined by the Secretary.
26 Each member shall be paid his or her necessary expenses while

1 engaged in the performance of his or her duties.

2 (e) Members of the Advisory Board shall be immune from suit
3 in an action based upon any disciplinary proceedings or other
4 acts performed in good faith as members of the Advisory Board.

5 (f) The Advisory Board shall meet monthly or as convened by
6 the Department Chairperson.

7 (g) The Advisory Board shall advise the Department on
8 matters of licensing and education and make recommendations to
9 the Department on those matters and shall hear and make
10 recommendations to the Secretary on disciplinary matters that
11 require a formal evidentiary hearing.

12 (h) The Secretary shall give due consideration to all
13 recommendations of the Advisory Board.

14 (Source: P.A. 95-572, eff. 6-1-08.)

15 (225 ILCS 407/10-15 rep.)

16 (225 ILCS 407/10-25 rep.)

17 (225 ILCS 407/15-20 rep.)

18 (225 ILCS 407/20-45 rep.)

19 (225 ILCS 407/20-90 rep.)

20 (225 ILCS 407/30-15 rep.)

21 (225 ILCS 407/30-20 rep.)

22 (225 ILCS 407/30-35 rep.)

23 (225 ILCS 407/30-40 rep.)

24 (225 ILCS 407/30-45 rep.)

25 Section 10. The Auction License Act is amended by repealing

1 Sections 10-15, 10-25, 15-20, 20-45, 20-90, 30-15, 30-20,
2 30-35, 30-40 and 30-45.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.

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